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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ELLIS KYLES,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
METROPOLITAN TRANSIT
AUTHORITY et al.,

Defendants and Respondents.

B185424

(Los Angeles County
Super. Ct. No. BS 096388)

GLEND A K. JOHNSON,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
METROPOLITAN TRANSIT
AUTHORITY et al.,

Defendants and Respondents.

B185425

(Los Angeles County
Super. Ct. No. BS 096286)

SURIN CHETNAKARNKUL,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
METROPOLITAN TRANSIT
AUTHORITY et al.,

Defendants and Respondents.

B185734

(Los Angeles County
Super. Ct. No. BS 096135)

APPEAL from orders of the Superior Court of Los Angeles County, Andria K. Richey, Judge. Affirmed.

Law Offices of Leo James Terrell and Leo James Terrell for Plaintiffs and Appellants.

Raymond G. Fortner, County Counsel, Mary E. Reyna, Deputy County Counsel, for Defendants and Respondents.

* * * * *

Appellants Ellis Kyles, Glenda Johnson and Surin Chetnakarnkul in these consolidated cases appeal from the denials of their petitions for an order permitting a late claim against respondents Los Angeles County Metropolitan Transportation Authority and the Public Transportation Services Corporation (MTA). We affirm.

FACTS AND PROCEDURAL HISTORY

Appellants are former employees of the MTA. In 2003, appellants were told that “due to budget cuts and business necessity,” they were being laid off. Appellants

voluntarily signed releases in exchange for enhanced severance pay and retirement age and service credit. Each appellant was over 40 years old at the time of layoff.

On February 9, 2005, attorney Leo James Terrell contacted appellants and informed them that a coworker, Warren Fu, had succeeded in overcoming a motion for summary judgment in an age discrimination suit against the MTA. (*Fu v. Los Angeles County Metropolitan Authority*, Super. Ct. L.A. County, 2005, No. BC 311668.) After speaking with Terrell, appellants concluded they had been terminated because of their age and retained Terrell to pursue claims against respondents on their behalf.

Appellants subsequently filed applications for permission to file late claims with the MTA under the Government Claims Act. (Gov. Code, § 911.4.) Appellants' applications for permission to file late claims were filed more than one year after their layoffs. Specifically, Chetnakarnkul filed his application one year and 10 months after he had been laid off; Kyles filed over one year and nine months after his layoff, and Johnson filed almost one year and nine months after being laid off. The MTA denied appellants' applications to file late claims. Appellants then filed petitions with the superior court for orders permitting late claims against a governmental entity. (See Gov. Code, § 946.6.) Appellants sought to file substantially identical complaints against the MTA for (1) wrongful termination in violation of public policy; and (2) intentional and negligent infliction of emotional distress. The superior court denied appellants' petitions.

Appellants timely appealed the orders denying their petitions.

Recognizing that appellants' claims might have been brought under the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. § 621 et seq.), the Older Workers Benefit Protection Act (OWBPA) (29 U.S.C. §§ 621, 623, 626, 630) or the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), this court informed the parties a question had arisen whether appellants' claims are subject to the claims presentation requirements of the Government Claims Act. (Gov. Code, § 900 et seq.) We invited the parties to file supplemental briefs on the matter. In their supplemental brief, appellants asserted their substantive rights under the common law, and they thus opted to forego any rights under FEHA, ADEA or OWBPA. That election

having been made, we deem appellants' causes of action, if any, to be common law claims subject to the Government Claims Act.

DISCUSSION

Under the Government Claims Act, a person claiming to have been injured by the acts and omissions of a local public entity or its employees must file a claim with the entity not later than six months after the accrual of the cause of action. (Gov. Code, § 911.2.) Presentation and rejection of a claim are conditions precedent to the bringing of a suit for money or damages against the entity. (§ 945.4.) If the person fails to present a timely claim, a written application for permission to file a late claim must be presented to the entity. (§ 911.4.) If the application is denied, or if after 45 days the entity has failed to act on the application (§ 911.6), then the person may file a petition in the appropriate court for relief from the claim filing requirements. (§ 946.6.) The court shall relieve the petitioner from the claim presentation requirements if: (1) the application to file the late claim was made within a reasonable period not to exceed that specified in section 911.4, subdivision (b), in other words, one year after the accrual of the cause of action; and (2) the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect, unless the public entity establishes it would be prejudiced in the defense of the claim if the court grants petitioner relief. (§ 946.6, subd. (c).)

Appellants contend the superior court erred in denying them relief under section 946.6, subdivision (c). We disagree.

When the underlying late-claim application is filed more than one year after the cause of action accrues, the court lacks jurisdiction to grant late claim relief. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1779.) "Filing a late-claim application within one year after the accrual of a cause of action is a jurisdictional prerequisite to a claim-relief petition." (*Ibid.*; see also *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713.) The purpose of the one-year statutory requirement is to protect a governmental entity from having to respond to a claim many years after a cause of action has accrued. (*Hernandez v. County of Los Angeles* (1986) 42 Cal.3d 1020, 1030; *County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303, 1314.)

A cause of action ordinarily accrues when, under the substantive law, the wrongful act is done and the obligation or liability arises. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 459, pp. 580-581.) For purposes of filing a tort claim for wrongful termination, the cause of action accrues when the employment is terminated. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 501; *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1320.) Here, the faces of the complaints disclose that appellants filed their late-claim applications more than one year after termination and thus more than one year after their causes of action accrued. Because appellants failed to file their underlying applications within one year (§ 911.4, subd. (b)), the superior court had no jurisdiction to grant appellants' petitions. (*Munoz v. State of California, supra*, 33 Cal.App.4th at p. 1779.)

Appellants contend, however, that the date of accrual of each cause of action was not the date an appellant was laid off by the MTA, but instead the date the appellant became aware of his or her injury -- namely, when counsel Terrell informed the appellant his or her rights had been violated, sometime in February 2005. We are not persuaded by this argument.

“An important exception to the general rule of accrual is the ‘discovery rule,’ which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) To rely on the discovery rule for a delayed accrual of a cause of action, “[a] plaintiff whose complaint shows on its face that his [or her] claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.” (*McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 160.) “Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. [Citations.] . . . [Citation.] In so using the term ‘elements,’ we do not take a hypertechnical approach to the application of the discovery rule. Rather than examining whether the plaintiffs suspect facts supporting each specific legal element

of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them.” (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, at p. 807.) A plaintiff is held to his or her actual knowledge as well as knowledge that reasonably could be discovered through investigation of available sources. (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101 [“Possession of ‘presumptive’ as well as ‘actual’ knowledge will commence the running of the statute”].) Thus, a plaintiff is charged with presumptive knowledge of injury if he or she has information of circumstances to put him or her on inquiry or if the plaintiff has the opportunity to obtain knowledge from sources open to investigation. (*Fox v. Ethincon Endo-Surgery, Inc.*, at pp. 807-808.)

In this case, at the time of their termination, appellants signed and received a “Supplemental Severance Option Election Form - 2003.” The election form referred to the ADEA and stated that employees “**age 40 or over**” had 45 days to review an acknowledgement and release form prior to signing it.¹ Appellants knew they were over 40 and were being laid off. They thus had reason to suspect the ADEA might apply to their layoffs, particularly since the election form mentioned the ADEA and, in accordance with that act, gave them an extended period in which to exercise their options. Appellants at that point had information of circumstances sufficient to put a reasonable person on inquiry or at least had the opportunity to obtain knowledge from sources open to their investigation. Armed with the same facts, their coworker, Warren Fu, was sufficiently alerted to retain counsel to investigate and to file a timely claim. Appellants were “in no worse a position” than Fu and had sufficient facts to put them on inquiry at the time of their termination. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1117.) Although appellants contend that Fu’s situation is distinguishable in that he was denied reemployment, appellants were nonetheless in possession of information that should have alerted them to the necessity for investigation and pursuit of their remedies.

¹ Other provisions applied to employees under 40, who received a shorter period in which to make an election.

Appellants claim they were not aware of their injury until counsel Terrell informed them their rights had been violated. However, “it is the knowledge of facts rather than discovery of legal theory, that is the test.” (*McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 803.) A plaintiff’s ignorance of the legal significance of facts known to him or her does not toll the statute of limitations. (*Graham v. Hansen* (1982) 128 Cal.App.3d 965, 972, 974.) “ ‘It is plaintiff’s burden to establish “facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.” ’ ” (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 833.) Appellants failed to meet this burden.

DISPOSITION

The orders denying appellants’ petitions for orders permitting late claims are affirmed. Respondents are to recover their costs on appeal.

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FLIER, J.

We concur:

COOPER, P. J.

BOLAND, J.